

CHAPTER 91  
LICENSED GRAIN DEALERS AND BARGAINING AGENTS

[Prior to 7/30/86, Commerce Commission [250], Ch 13]  
[Prior to 7/27/88, 21—Ch 61]

**21—91.1(203) Application of rules.** These rules are subject to such changes and modifications as the department of agriculture and land stewardship may from time to time deem advisable to such exceptions as may be considered just and reasonable in individual cases.

This rule is intended to implement Iowa Code section 203.2.

**21—91.2(203) Definitions.** For rules of the department of agriculture and land stewardship, the following definitions apply:

“*Bureau*” means the grain warehouse bureau of the department of agriculture and land stewardship;

“*Department*” means the Iowa department of agriculture and land stewardship;

“*Received*” means the earlier of the following:

1. The date a state warehouse examiner acknowledges receipt.
2. The date stamped “received” in the warehouse bureau.

3. The date postmarked, if the item is properly addressed, to the Warehouse Bureau of the Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319.

**21—91.3(203) Application for license.** Application for a grain dealer license (Iowa Code chapter 203) shall be made to the bureau on forms prescribed for that purpose by the bureau. Forms are available from the bureau upon request. All information required by Iowa Code chapter 203 shall be furnished. The bureau may require the applicant to file updated information if the information on the application is no longer current. The background information on managers and persons applying for the license must be on file prior to a license being issued.

This rule is intended to implement Iowa Code sections 203.2 and 203.3.

**21—91.4(203) Grain dealer license not transferable.** Grain dealer licenses are not transferable between different legal entities. Grain dealer licenses may be amended to cover a name change of the same legal entity. The license holder shall give the bureau notice of a proposed name change and, if applicable, a copy of the articles of incorporation changing the name.

This rule is intended to implement Iowa Code section 203.7.

**21—91.5(203) Posting of license and fee receipt.** The grain dealer license and annual fee receipt for the current license period shall be posted in a conspicuous location in the office or place of business of the grain dealer at all times. A copy of the license shall be posted in each location where grain is purchased.

This rule is intended to implement Iowa Code section 203.7.

**21—91.6(203) Surrender of license.** The grain dealer’s license and all unused credit-sale contracts shall be forwarded to the bureau immediately upon cancellation, termination, or revocation of such license. The letter requesting cancellation shall also state whether or not there are any unpaid obligations.

This rule is intended to implement Iowa Code sections 203.2, 203.3 and 203.7.

**21—91.7(203) Renewal, termination and reinstatement of license—payment of license fee.**

**91.7(1)** The bureau shall send to each licensed grain dealer written notice that application and license fee for annual renewal of the grain dealer license shall be received in accordance with Iowa Code

section 203.5. Failure to receive the application and fee by the department by the date due shall cause the license to terminate. A license that has been so terminated may be reinstated within 30 days of the date of termination conditioned on the applicant meeting all statutory requirements and receipt by the bureau of the following within the 30-day time period:

- a. Completed application,
- b. License fee, and
- c. The reinstatement fee prescribed in Iowa Code section 203.6.

**91.7(2)** Fees for license periods of less than one-year duration shall be prorated on a month-to-month basis. License periods of less than one-year duration shall be applicable only under the following circumstances:

- a. When an application for a new license is filed.
- b. When the fiscal year end of a license holder is changed.

This rule is intended to implement Iowa Code sections 203.5 and 203.6.

**21—91.8(203) Financial statements.** To obtain a grain dealer license, an applicant shall submit a financial statement. This statement shall have been prepared within three months from the date of filing and be in conformity with the applicable requirements as to annual financial statements.

A new business entity, which is in the process of transferring funds into the business name, filing for a license may file a pro forma balance sheet prepared by a certified public accountant licensed in this state in lieu of a current financial statement. Within one month after the issuance of a license by the bureau, the bureau shall receive a financial statement which complies with 91.8(1), either paragraph “a” or “b.”

**91.8(1) Financial statement requirements.** Financial statements filed pursuant to this rule shall comply with either of the following:

- a. Be accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. The bureau may accept a qualification in an opinion that is unavoidable by any audit procedure. Opinions that are qualified because of the limited audit procedure or because the scope of an audit is limited shall not be accepted by the bureau.

- b. Be accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant.

**91.8(2) Sole proprietorship financial statements.** Individuals licensed as sole proprietorships shall file a financial statement which conforms with the provisions of subrules 91.8(1) and 91.8(3) on the proprietorship business. The individual shall also file a personal statement of financial condition which conforms with the provisions of subrules 91.8(1) and 91.8(3). The personal statement of financial condition shall also disclose the historical cost basis for assets as provided in Iowa Code section 203.3.

**91.8(3) Filing date of statements.** Every licensee shall prepare a financial statement at the close of the designated fiscal year and shall file the statement and the bureau’s financial information form with the bureau not later than three months thereafter. This statement shall be prepared in accordance with generally accepted accounting principles. This financial statement shall contain a minimum of a balance sheet, statement of income, statement of cash flow, and accompanying footnotes. The bureau shall send a written statement to all licensees during the month after the close of the licensees’ fiscal year notifying them that their financial statements are due three months from the close of their fiscal year.

**91.8(4) Additional disclosures required in the financial statements.** The following information shall be separately disclosed in the financial statements:

- a. Dollar amount of total grain sales.
- b. Depreciation expense.
- c. Interest expense.
- d. Related party transactions.
- e. Outstanding bushels and dollars of each type of credit-sale contract:  
Advances made shall be disclosed for each type of contract.

f. A reconciliation of differences in the grain obligations as shown in the financial statement and the daily position record.

g. Number of bushels of grain purchased under each grain dealer's license. For purposes of this subrule, purchases shall mean all grain which the grain dealer has obtained title to during the grain dealer's fiscal year.

**91.8(5) *Filing extension.*** An extension of one month may be granted for the filing of financial statements by the bureau chief upon receipt of the following:

a. A letter from the grain dealer's certified public accountant stating the reason for filing the extension request and that work has been done on preparing the financial statements.

b. An affidavit from the grain dealer stating the grain dealer meets the financial responsibility requirements of Iowa Code sections 203.3 and 203.15, or that the licensee shall file additional bond in an amount to cover any net worth or current ratio deficiency as provided in Iowa Code sections 203.3 and 203.15, based upon the licensee's certified public accountant's best estimate of the licensee's financial position.

c. Grain dealers who file false affidavits under this rule may be prosecuted under Iowa Code section 203.11.

Subrule 91.8(5) does not apply to the filing of monthly financial statements.

**91.8(6) *Asset valuation.*** The licensee may submit a written request for asset valuation to the bureau. Before an appraisal will be accepted by the bureau, the licensee shall show a positive net worth. The written request shall be accompanied by the appraisal and shall have been prepared by a licensed appraiser in this state and shall list the appraiser's credentials. All appraisals are subject to approval by the grain warehouse bureau chief. The bureau chief shall notify the licensee within five working days if the appraisal is unacceptable.

Any approved valuation may be used in any financial statements prepared by or for the licensee in accordance with 91.8(1).

**91.8(7) *Appraisals.*** Competent appraisals on file with the bureau shall be valid for use in determining asset value for a maximum period of three years. Thereafter, a new appraisal for asset valuation shall be required and shall be used for a like period of time. In the event the certified public accountant expresses doubt as to the licensee's ability to continue as a going concern, the bureau shall not allow an appraisal to be used to meet net worth requirements.

All assets included in the appraisal shall be depreciated by the bureau using the following schedule:

a. Buildings and attached equipment—15 years.

b. Rolling stock (trucks)—5 years.

c. Equipment—5 years.

**91.8(8) *Assets allowed in meeting financial requirements.***

a. Corporations and partnerships. When determining the net worth and current assets to current liabilities ratio requirements for corporations and partnerships, related party assets that require financial disclosure per financial accounting standards shall be disallowed. These assets shall be excluded unless the licensee can show the department sufficient documentation why these assets should be allowed.

b. Sole proprietors. When determining the net worth and current assets to current liabilities ratio requirements for sole proprietors, related party assets shall be excluded unless the licensee can show the department sufficient documentation why these assets should be included.

Only that part of the value of an asset which is subject to execution shall be allowed by the bureau in determining net worth and current assets to current liabilities ratio requirements. When a liability associated with an exempt asset (whether the asset is included or not) exceeds the original cost (or fair market value after an appraisal approved by the bureau), such excess shall be shown as a liability with appropriate footnotes to the financial statement. Applicants or licensed warehouse operators shall complete the bureau's financial information form regarding this matter and submit the form with the financial statements.

**91.8(9) *Net worth and current ratio deficiency monthly financial statements.*** All licensees who have a net worth or current ratio deficiency and who have filed additional bond shall file monthly finan-

cial statements with the bureau by the end of the next month until their net worth or current ratio meets the requirements of Iowa Code section 203.3 for a minimum of three consecutive months. These financial statements shall contain a minimum of a balance sheet and statement of income.

**91.8(10) *Good cause financial statement.*** The bureau chief may require a licensee to file a financial statement which complies with 91.8(2) “b” within 45 days of notification by the bureau if one of the following conditions exists:

- a. Insufficient funds check(s).
- b. Evidence of licensee requesting or delaying payment for grain without the use of a credit-sale contract for grain.
- c. Other documented evidence which indicates the licensee’s financial condition has deteriorated since the filing of the licensee’s last financial statement.
- d. A high risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer based on a statistical model provided in 1992 Iowa Acts, chapter 1239, section 65.
- e. Record-keeping violations.

**91.8(11) *Additional information.*** The bureau chief may require an applicant or licensee to provide the bureau with any other information reasonably related to the business of a grain dealer and work papers supporting the financial statements.

**91.8(12) *Penalty for failure to timely supply financial statements.*** The department may suspend the license of any grain dealer who fails to provide the required financial statements within the time limits prescribed by these rules.

This rule is intended to implement Iowa Code sections 203.1, 203.2, 203.3, and 203.6.

**21—91.9(203) *Bonds and irrevocable letters of credit.*** Bonds filed with the bureau shall be on forms prescribed by the bureau. Irrevocable letters of credit issued to the bureau shall be on the form prescribed by the bureau. Bonds and irrevocable letters of credit shall be written so as to provide funds to protect producers who have sold grain to the licensed grain dealer.

**91.9(1) *Deficiency bond or irrevocable letter of credit.*** When the net worth or current ratio of a licensee is less than required by Iowa Code section 203.3, the grain dealer may file a bond or an irrevocable letter of credit with the bureau to cover the deficiency as provided by and within the time prescribed in Iowa Code section 203.3. Bonds filed with the bureau shall be on forms prescribed and furnished by the bureau. Irrevocable letters of credit shall be on the form prescribed by the bureau. Bonds or irrevocable letters of credit shall be written so as to provide a source of funds to protect producers who have sold grain to the licensed grain dealer. Unless the bond or irrevocable letter of credit is filed within the prescribed time period, the grain dealer license shall be suspended. Failure to provide the bond or irrevocable letter of credit within ten days of suspension shall cause the license to be revoked.

**91.9(2) *Time period to correct deficiency.*** If a grain dealer has current assets equal to less than 50 percent of current liabilities and files a deficiency bond or irrevocable letter of credit as provided in Iowa Code section 203.3(5) within the 30-day period after the notice by the bureau, the grain dealer shall correct the deficiency other than by the use of a deficiency bond or irrevocable letter of credit within 30 days after the filing of the deficiency bond or irrevocable letter of credit. Failure to cure the deficiency other than by the use of a deficiency bond or irrevocable letter of credit within the 30 days shall cause the license to be suspended.

**91.9(3) *Replacement bond or irrevocable letter of credit.*** The bureau shall send written notice to the licensee notifying the licensee that the bond or irrevocable letter of credit shall be canceled on the date specified by the surety or issuer in its notice to the bureau. The bureau shall include information and forms for filing the required replacement bond or irrevocable letter of credit with the written notice. Replacement bond or irrevocable letter of credit shall be on file with the bureau prior to the time of cancellation of the bond or irrevocable letter of credit. The department shall suspend any grain dealer license from the time its bond or irrevocable letter of credit is canceled until the replacement bond or irrevocable letter of credit is on file with the department. Unless the bond or irrevocable letter of credit

is no longer necessary, the department shall revoke the grain dealer license if a replacement bond or irrevocable letter of credit is not received within 30 days of suspension of the license.

**91.9(4) *Cancellation of the bond or irrevocable letter of credit.*** A cancellation notice shall be forwarded to the bureau by the issuer, mailed by certified mail, and shall be in accordance with the provisions stated in the bond or irrevocable letter of credit. The time period for notice of cancellation stated in the bond or irrevocable letter of credit commences the date the bureau takes physical possession of the notice. The bureau shall send written notice of the cancellation of the bond or irrevocable letter of credit to the issuer and the principal.

This rule is intended to implement Iowa Code sections 203.3 and 203.4.

**21—91.10(203) *Payment.*** Payment for grain shall be made as provided by Iowa Code section 203.8. When a dealer has failed to make payment on demand of the seller and such failure has come to the attention of the bureau, the bureau chief shall request the dealer to make payment within 24 hours. Such request may be made verbally and confirmed by mail. The bureau chief may require the dealer to make payment with a certified or cashier's check if there is any evidence of financial instability. Absent a dispute between buyer and seller, the license may be suspended if the dealer fails to make timely payment as requested by the bureau chief. An insufficient funds check shall not constitute payment under this chapter.

This rule is intended to implement Iowa Code sections 203.2 and 203.8.

**21—91.11(203) *Books and records.***

**91.11(1) *General records.*** A grain dealer shall maintain complete and sufficient records to show all purchases, sales, and payments for grain purchased. Records shall include but are not limited to:

- a. Name and address of seller.
- b. Date grain was received or delivered.
- c. Amount, kind and grade of grain purchased.
- d. Date payment is made and amount paid to seller.
- e. Record of all outstanding purchase contracts, excluding credit-sale contracts.

**91.11(2) *Daily position record.*** Unless otherwise approved by the bureau, every grain dealer shall keep and maintain on a daily basis a grain position record on a form approved by the bureau. The daily position record shall summarize one month's activity in a format approved by the bureau. The daily position record shall indicate at least the increases and decreases and ending balances on a daily basis for company-owned unpaid, company-owned paid, and ending balance of total company-owned. The daily position record shall reflect the obligations in the appropriate columns.

A separate daily position record shall be maintained for each kind and class of grain.

All daily entries to the daily position record shall reflect transactions made through that day's close of business unless another time of day is elected by the licensee and applied by the licensee on a consistent basis.

**91.11(3) *Inspection.*** For the purpose of inspection, the hours of 8 a.m. to 5 p.m., except Saturday, Sunday and holidays, shall be considered as ordinary business hours. All financial records, grain records and payment records shall be available for inspection by the bureau during ordinary business hours, and any other time specified by the bureau in writing. All records shall be made available within the state of Iowa upon request. An examination fee shall be assessed to the grain dealer if an examiner arrives at the licensee's location and the records are not available for inspection unless the bureau has been notified that the records would not be available for inspection.

**91.11(4) *Settlement sheets.*** Unless the grain dealer utilizes a computer system which sequentially numbers settlement sheets as generated, every grain dealer shall have prenumbered settlement sheets. All settlement sheets shall show a minimum of:

- a. The grain dealer's name and address.
- b. Seller's name and address.
- c. Date of deliveries.
- d. Scale ticket numbers.

- e. Amount, kind and grade of grain.
- f. Price per bushel.
- g. Date, amount of payment, and check number.
- h. If deferred payment, deferred pricing, or other types of credit-sale contracts.

One copy of the settlement sheet shall be maintained by the dealer as part of the grain payment records in alphabetical or numerical order. A copy of the settlement sheet shall be given to the seller upon demand or payment. Any settlement sheet used in the pricing of grain for the purpose of sale to the grain dealer shall have the price shown on all copies of such settlement sheet. Deliveries and settlement transactions shall be posted to the settlement sheet on a daily basis unless a computer system is utilized which can generate a scale ticket summary sheet for each depositor.

**91.11(5) *Scale tickets.*** If the dealer has a scale or regular access to a scale which can be used for weighing grain, the dealer shall use prenumbered scale tickets showing a minimum of:

- a. Date.
- b. The dealer's name and location.
- c. Seller's name.
- d. Gross weight, tare weight, and delivered weight.
- e. Type of product or commodity.
- f. Indicate whether the commodity is being received or loaded out.

One copy of each ticket shall be maintained in numerical order as part of the grain records. All scale ticket forms in the possession of a grain dealer shall have been permanently and consecutively numbered at the time of printing. It shall be the responsibility of the licensee to provide a list of all scale tickets used at each location. Any scale ticket used in pricing grain for the purpose of sale to the warehouse operator shall have the price shown on all copies of such ticket if priced at the time of delivery.

If the dealer does not have a scale or regular access to a scale and purchases grain by having such grain custom weighed at various locations or at destination, the dealer shall maintain one copy of the scale ticket in daily order as part of the grain records.

**91.11(6) *Credit-sale contracts.*** One copy of all outstanding credit-sale contracts shall be maintained in numerical order as part of the records. Credit-sale contracts shall contain a minimum of the following:

- 1. Buyer's name and location;
  - 2. Seller's name and address;
  - 3. The conditions of delivery;
  - 4. Amount and kind of grain delivered;
  - 5. Price per bushel or basis of value;
  - 6. The date payment is to be made;
  - 7. The duration of the credit-sale contract, which shall not exceed 12 months from the date the contract is executed;
  - 8. The wording "Credit-Sale Contract" shall appear in the title or subtitle of the contract;
  - 9. Be consecutively numbered at the time of printing.
- a. Notice of credit-sale contract acknowledgment. A licensed grain dealer who purchases grain by credit-sale contract shall obtain the seller's signature on a notice of credit-sale contract acknowledgment, which shall be in a form prescribed by the bureau. The notice shall state that the seller has received notice that the grain is not protected by the grain depositors and sellers indemnity fund. A copy of the notice shall be attached to the licensee's and seller's copies of the credit-sale contracts. Failure to obtain the acknowledgment of the seller is a violation of Iowa Code section 203.15(8) and may result in license suspension or revocation under Iowa Code section 203.10. Failure to obtain the acknowledgment of the seller does not alter the fact that the seller shall be unable to recover from the grain depositors and sellers indemnity fund for any loss incurred under the credit-sale contract.
- b. In lieu of obtaining the separate credit-sale acknowledgment form, the following wording shall be added to the credit-sale contract directly above the signature of the buyer and seller in bold size print of equal size or larger than the body of the contract: "By their signature hereto, the undersigned

aver that the seller has been orally advised by the buyer that this transaction is not covered by the grain depositors and sellers indemnity fund.”

Purchases of grain by credit-sale contract by a licensee from another grain dealer are not subject to the requirements of 91.11(6). Such grain is nonassessable grain and is not eligible for recovery from the fund.

**91.11(7) Cancellation procedures for credit-sale contracts.**

*a.* One copy of the canceled credit-sale contract shall be maintained in separate numerical order from the outstanding credit-sale contracts as part of the records. The grain dealer shall mark the face of the credit-sale contract with the word “Canceled”, the check number, and date of payment.

*b.* Partial payments. Advances and partial payments shall be noted on the face of the outstanding credit-sale contract. The following information shall be noted:

1. Amount of bushels paid;
2. Date paid;
3. Check number;
4. Remaining balance of the contract.

**91.11(8) Retention of records.** All records shall be kept for a period of not less than six years. Such records shall be kept for the stated time period even if a license has been canceled.

This rule is intended to implement Iowa Code sections 203.2, 203.9, and 203.15.

**21—91.12(203) Assignment of contracts.** Upon cancellation, termination, suspension or revocation of the license, contracts may be assigned to another grain dealer licensed under Iowa Code chapter 203 unless strictly prohibited in the terms of the contract. All affected producers shall be notified in writing by the assignee of the assignment. A copy of the assignment shall be forwarded to the bureau showing the contracts assigned and to whom within 30 days of cancellation, termination, suspension or revocation of the license. All credit-sale contracts shall be paid for or reassigned within 30 days of cancellation, termination, or revocation of the license.

This rule is intended to implement Iowa Code sections 203.2 and 203.15.

**21—91.13(203) Filing of monthly grain statement and reports.** A grain statement shall be prepared at the close of business at the end of each calendar month and filed with the bureau by the tenth of the month following. The grain statement shall be on a form prescribed by the bureau and furnished to the dealer. A grain statement shall be filed for each calendar month regardless of whether or not the dealer has conducted any business during that period.

The bureau may require the dealer to file any other report and the dealer shall file with the bureau any such report requested by the bureau within such time period as is specified by the bureau.

This rule is intended to implement Iowa Code section 203.2.

**21—91.14(203) Notice to the warehouse bureau.**

**91.14(1)** The bureau shall be notified in writing prior to:

- a.* Change of majority ownership of the grain dealer.
- b.* Change of name or business address of the grain dealer.
- c.* Change of the licensee’s fiscal year end.
- d.* Change or termination of legal entity.

**91.14(2)** The bureau shall be notified by the licensee within 24 hours after the licensee knows or should have known any of the following:

*a.* Licensee’s net worth falling below the amount required by Iowa Code section 203.3 and if the amount of the deficiency is not covered by a net worth deficiency bond.

*b.* Licensee’s current assets falling below the amount required by Iowa Code section 203.3 and the deficiency is not covered by a current ratio deficiency bond.

*c.* Class 2 licensee’s grain purchases from producers exceed \$500,000 during their fiscal year.

**91.14(3)** The bureau shall be notified in writing by the licensee within ten days after the licensee knows or should have known any of the following:

- a. Change in management.
- b. The death of an individual or member of a partnership licensed as a grain dealer.

This rule is intended to implement Iowa Code sections 203.2 and 203.3.

**21—91.15(203) Shrinkage adjustments—disclosure—penalties.** A person who, in connection with the receipt of grain for storage, processing or sale, adjusts the scale weight of the grain to compensate for the moisture content of the grain; or to compensate for losses to be incurred during the handling, processing, or storage of the grain shall do so in accordance with the provisions of Iowa Code section 203.20.

This rule is intended to implement Iowa Code section 203.20.

**21—91.16(203) Requirements for Class 2 licensees.** A Class 2 licensee whose purchases from producers during the fiscal year exceed \$500,000, and who is thereby required by Iowa Code section 203.3 to apply for a Class 1 license, shall file the application with the warehouse bureau within 30 days after the purchases exceed \$500,000. The application shall include the additional \$250 annual assessment for Class 1 licensees required under rule 21—92.2(203D).

This rule is intended to implement Iowa Code section 203.3.

**21—91.17(203) Requirements for licensees authorized to issue credit-sale contracts.** A grain dealer shall not purchase grain by a credit-sale contract until the licensee complies with paragraphs “1” or “2.” If the grain dealer elects to be authorized to issue credit-sale contracts under paragraph “2,” the grain dealer shall also comply with rule 21—91.8(203). All entities licensed prior to July 1, 1992, and authorized to use credit-sale contracts prior to July 1, 1992, shall have until June 30, 1993, to comply with Iowa Code section 203.15.

1. Financial statements filed pursuant to this rule shall be accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. The grain warehouse bureau may accept a qualification in an opinion that is unavoidable by any audit procedure. Opinions that are qualified because of the limited audit procedure or because the scope of an audit is limited shall not be accepted by the grain warehouse bureau.

A sole proprietor who desires to be authorized to issue credit-sale contracts shall file a financial statement on the proprietorship business which is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state, and a personal financial statement which conforms with the provisions of subrule 91.8(1).

2. The grain dealer bond or irrevocable letter of credit filed pursuant to this rule shall be in the amount of \$100,000 payable to the department. Bonds or irrevocable letters of credit shall be on the form prescribed and furnished by the grain warehouse bureau.

**91.17(1) Credit-sale contract net worth requirements.** When the grain dealer’s net worth falls below the amount required by Iowa Code section 203.15(7), the grain dealer shall immediately cease purchasing grain by credit-sale contract. Failure to cease purchasing grain by credit-sale contract shall result in the suspension of the grain dealer license. Bonds or irrevocable letters of credit filed to correct the deficiency shall be on the forms prescribed and furnished by the grain warehouse bureau. The procedure for the filing of a deficiency bond or irrevocable letter of credit shall be the same as set forth in Iowa Code section 203.3(8). Bonds or irrevocable letters of credit shall be written so as to provide a source of funds to protect sellers who have sold grain by means of a credit-sale contract to the licensed grain dealer.

Advances to sellers on grain purchased by credit-sale contract will be considered when calculating the 50 cents per bushel net worth requirement. The amount and percentage of advances shall be shown on the face of the credit-sale contract or on a listing which identifies the contracts and the amount of the advance.



**91.17(2)** *Suspension of authorization to issue credit-sale contracts.* The department may suspend the right of a grain dealer to purchase grain by credit-sale contract based on any of the following conditions:

a. The grain dealer holding a federal or state warehouse license does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligation based on an examination by the department or the United States Department of Agriculture.

b. Collateral receipts cannot be issued for grain represented by credit-sale contract except for the percentage of bushels paid for through advances to sellers on grain purchased by credit-sale contract. The amount and percentage of advances shall be shown on the face of the credit-sale contract or on a listing which identifies the contracts and the amount of the advances.

c. A grain dealer shall not purchase grain on credit-sale contracts during any time period in which the grain dealer's current assets are less than 100 percent of current liabilities, or the grain dealer's net worth is less than \$75,000.

d. The grain dealer violates Iowa Code section 203.15.

e. The grain dealer's total liabilities are greater than 75 percent of the grain dealer's total assets.

f. The grain dealer has made payment by use of a financial instrument which is a check, share draft, draft, or written order on a financial institution, and a financial institution refuses payment on the instrument because of insufficient funds in a grain dealer's account.

g. The department discovers that a grain dealer has delayed payment for grain purchased since the department last inspected the grain dealer pursuant to Iowa Code section 203.9.

This rule is intended to implement 1992 Iowa Acts, chapter 1239, section 64.

**21—91.18(203) Department of agriculture and land stewardship enforcement procedures.** The bureau shall follow a step-by-step enforcement policy to ensure consistent compliance with and application of these rules. The department recognizes that violations of certain rules may have more serious ramifications, and thus, the enforcement of those rules requires stricter policies. The enforcement policies apply to any violation of these rules unless enforcement provisions are specifically addressed in a particular rule or subrule.

**91.18(1)** If it is necessary to establish proof of a Code or rule violation, a special investigation of the licensee shall be conducted by the bureau. The bureau may contact the licensed grain dealer, the grain dealer's employees, or any other interested party to gain information for the investigation. The bureau, in its investigation of a licensee, may cause a special examination to occur if evidence of at least one of the following conditions is present:

- a. Insufficient funds check,
- b. Stalled payment for grain,
- c. Quantity deficiency,
- d. Quality deficiency.

The expense of such special examination shall be based on actual costs incurred by the bureau and may be assessed to the licensee. The costs shall include the labor, travel and any other additional costs incurred by the bureau. Payment shall be made as directed by the bureau.

**91.18(2)** Upon establishment by the bureau of a Code or rule violation, the bureau shall notify the licensee in writing that the licensee must be in compliance with the department's rules within a period of time to be established by the bureau. The bureau shall consider the following elements in determining the proper period of time within which to require a licensee to comply with the rules:

- a. Likelihood of producer loss,
- b. Gravity of the offense,
- c. Length of time within which a reasonable licensee in a similar circumstance should be able to comply with the rules.

**91.18(3)** The bureau chief may file an information against the licensee for any violation of these rules. The bureau chief shall consider the following factors in exercising statutory discretion to file an information:

- a. Likelihood of producer loss,

- b. Gravity of the offense,
- c. Licensee's intent to violate the rule,
- d. Licensee's record of Code or rule violations,
- e. Number of violations in the particular report.

**91.18(4)** The bureau chief may cause charges to be filed against the licensee for any violation of these rules. The bureau chief shall consider the following factors in exercising statutory discretion to file charges:

- a. Likelihood of producer loss,
- b. Gravity of the offense,
- c. Licensee's intent to violate the rule,
- d. Licensee's record of Code or rule violations.

This rule is intended to implement Iowa Code sections 203.2, 203.9, 203.10 and 203.11.

**21—91.19(203) Review proceedings.** A grain dealer licensee or applicant may file a formal written complaint with the department if the licensee or applicant contests the finding or decision of the bureau chief. Any such complaint shall be resolved in contested case proceedings conducted pursuant to the applicable provisions of 21—Chapter 2.

**21—91.20(203A) Application for bargaining agent permit.** Application for bargaining agent permit shall be on a form prescribed and furnished by the department. All information requested shall be entered on the form by typewriter or ink. Any additional information in regard to the application shall be supplied by the applicant. The application shall be filed in accordance with subrules 91.20(1) and 91.20(2) as follows:

**91.20(1)** If the bargaining agent is going to make payment to the producer, the agent shall file a bond or irrevocable letter of credit as required by 91.21(203A).

**91.20(2)** If the bargaining agent will not be receiving the proceeds from the sale of the grain, the agent shall file a copy of the bargaining agent agreement with the application.

This rule is intended to implement Iowa Code section 203A.2.

**21—91.21(203A) Bargaining agent permit not transferable.** Bargaining agent permits are not transferable between different legal entities. Bargaining agent permits may be amended to cover a name change of the same legal entity.

This rule is intended to implement Iowa Code section 203A.3.

**21—91.22(203A) Bonds and irrevocable letters of credit.** The bond or irrevocable letter of credit required for a bargaining agent permit shall be on forms prescribed and furnished by the department.

This rule is intended to implement Iowa Code section 203A.4.

**21—91.23(203A) Information on proceeds of sale.** Information required under Iowa Code section 203A.2 shall include amount of bushels sold and the amount of money held in trust for beneficiaries. The information and condition of the trust shall be forwarded to the department by the twenty-fifth of the following calendar month for the preceding month. Bargaining agents who follow the provisions of 91.20(2) do not need to file this report.

This rule is intended to implement Iowa Code section 203A.2.

**21—91.24(203A) Inspection of agent's books.** For the purposes of inspection, the hours of 8 a.m. to 5 p.m., except Saturday, Sunday and holidays, shall be considered as ordinary business hours. All records shall be available for inspection by the department during ordinary business hours and at any other time specified by the department in writing. All records shall be made available within the state of Iowa, upon request.

This rule is intended to implement Iowa Code section 203A.5.

**21—91.25(203A) Records.** The bargaining agent shall use a bargaining agent agreement on a form approved by and filed with the bureau. All bargaining agent agreements shall be maintained in alphabetical order. All records pertaining to the bargaining agent permit shall be maintained for a period of six years.

This rule is intended to implement Iowa Code section 203A.5.

**21—91.26(203) Prioritization of inspections of grain dealers.** Licensees with a probability of failure factor greater than 40 percent, as calculated by the statistical model, shall be examined at least twice in an 18-month period.

This rule is intended to implement Iowa Code section 203.22.

**21—91.27(203) Claims against credit-sale contract bond.**

**91.27(1) *Persons who may file claims—time of filing.*** These rules are applicable only in those instances where a bond has been filed to satisfy Iowa Code section 203.15. If a bond is on file with the department, a seller may file a claim with the grain warehouse bureau for satisfaction of a loss under the grain dealer's bond. A claim shall not be filed prior to the incurrence date, which is the earlier of the following:

- a. The revocation, termination, or cancellation of the license of the grain dealer,
- b. The filing of a petition in bankruptcy by a grain dealer.

To be timely, a claim shall be filed within 120 days of the incurrence date.

**91.27(2) *Notice.*** The grain warehouse bureau shall cause notice of the opening of the claim period to be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location, and in a newspaper of general circulation in the state. The notice shall state the name and address of the licensee and the claim incurrence date. The notice shall also state that any claims against the bond on account of the licensee shall be sent by certified mail to the grain warehouse bureau within 120 days after the incurrence date, and that the failure to make a timely claim relieves the department from liability to the claimant. This notice may be incorporated by the bureau with the notice required by Iowa Code section 203.12.

**91.27(3) *Determination of eligible claims.*** The grain warehouse bureau shall determine a claim to be eligible for payment if the grain warehouse bureau finds all of the following:

- a. That the claim was timely filed,
- b. The claimant qualifies as a credit-sale contract seller,
- c. A claim derives from a credit-sale contract transaction, if the claimant is a seller who delivered and transferred title of the grain to the grain dealer by credit-sale contract,
- d. That there is adequate documentation to establish the existence of a credit-sale contract claim and to determine the amount of the loss.

**91.27(4) *Value of loss—credit-sale contract claims.*** The dollar value of a credit-sale contract claim incurred by a seller who has sold and delivered grain and who is a creditor of the licensed grain dealer for all or part of the value of the grain shall be based on the amount stated on the obligation on the date of sale. If the sold grain was unpriced, the value of the claim shall be presumed to be based upon the fair market price, free-on-board from the site of the grain dealer, being paid to producers for grain by the grain terminal operator nearest the grain dealer on the date of the license revocation or cancellation or the filing of a petition in bankruptcy. If more than one date applies to a claim, the grain warehouse bureau may choose between the two. However, the grain warehouse bureau may accept an alternative valuation of a claim upon a showing of just cause by the seller. All sellers filing claims under this section shall be bound by the value determined by the grain warehouse bureau. The value of the loss is the outstanding balance on the validated claim at the time of payment.

**91.27(5) *Procedure—appeal.*** The grain warehouse bureau shall provide for notice to each credit-sale contract seller upon its determination of eligibility and value of loss. Within 20 days of the notice, the credit-sale contract seller may file a petition for hearing for review of either determination with the district court in the county in which the credit-sale contract seller resides, or in Polk County.

**91.27(6) *Payment of claims.*** Upon a determination of the status of all credit-sale contract claims, and after the filing period has run, the grain warehouse bureau shall provide a report to all valid, timely filed credit-sale contract claimants. If there are no appeals filed pursuant to subrule 91.27(5), the grain warehouse bureau shall make payment either in full or pro rata, in the event the value of the credit-sale contract claims is greater than the amount of the bonds.

This rule is intended to implement Iowa Code section 203.15.

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